

FILED

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ALEXANDER L. STEVAS
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No. 83-1055

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

DENNIS HAHN,

Petitioner,

v.

BRYANT-POFF, INC.,

Respondent,

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF INDIANA

PETITIONER'S REPLY BRIEF IN
OPPOSITION TO RESPONDENT'S MOTION
TO DISMISS OR AFFIRM

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ARGUMENT

I. THE FEDERAL QUESTION
RAISED BY THE PETITIONER
WAS PROPERLY RAISED IN A
TIMELY FASHION AND PASSED
ON BY THE INDIANA SUPREME
COURT.

In its Motion to Dismiss or Affirm, Bryant-Poff, Inc., hereinafter designated as "Respondent," argues that the Petitioner, hereinafter designated as "Dennis," failed to raise significant federal questions in a timely or proper fashion and that said questions were not expressly passed upon. (See Respondent's Motion, pages 4-5.) This position simply defies the logic of the record before this Court and ignores the established case law developed by this Court in this area.

Dennis raised the federal questions involved herein at his first possible opportunity--October 18, 1983. (See

Appendix of Petitioner--Appellee's
Petition for Rehearing, page A-52 -
A-56, inclusive.) The very question of
denial of Dennis' constitutional rights
by the Indiana Supreme Court did not
occur until the ruling of the tribunal
on September 29, 1983. The action of
the Indiana Supreme Court was surprising
and unexpected especially in light of
the Hoffman v. E.W. Bliss Company, ____
Ind. ____, 448 N.E.2d 277 (Ind. 1983),
decision, handed down by the Court over
four months prior to September 29, 1983.
As a result of the Indiana Supreme
Court's action, Dennis had no prior
opportunity to assert the federal
questions he does before this Court
until after September 29, 1983. Pur-
suant to the teachings of this Court,
Dennis' actions constitute a timely
raising of the federal question in the

state court. In support of this position, Dennis would cite this Court to the line of case law commencing with Brinkerhoff-Faris Trust and Savings Company v. Hill, 281 U.S. 673 (1930); Great Northern Railway Company v. Sunburst Oil & Refining Company, 287 U.S. 358 (1932); State of Missouri, ex. rel. Missouri Insurance Co. v. Gehner, 281 U.S. 313 (1930); Street v. State of New York, 394 U.S. 576 (1969).

Dennis had no reason, especially after the Indiana Supreme Court's published ruling in Hoffman, supra, to anticipate that his federal constitutional rights were in jeopardy.

It also appears that the Respondent maintains that Dennis' constitutional questions were not "expressly passed on" (see Respondent's Motion to Dismiss,

page 5). Once again the record of the proceedings below fails to support the position of the Respondent. The Indiana Supreme Court entered an Order on October 24, 1983, summarily denying Dennis' Petition for Rehearing. Dennis submits that he cannot force the Indiana Supreme Court to address the federal issue raised in his Petition for Rehearing. (See Appendix A-52 - A-56.) The Indiana Supreme Court had every opportunity to deal with those questions and failed to do so.

II. THE PETITIONER HAS
RAISED SUBSTANTIAL FEDERAL
QUESTIONS THAT THE RE-
SPONDENT HAS FAILED TO
ADDRESS

For purposes of this response,
Dennis will combine this section of
Argument to address points II and III
of Respondent's motion.

Respondent fails to marshall
argument that addresses the issues
presented to this Court by Dennis'
Petition. Respondent states glibly
that: "The Indiana law was applied
uniformly in both cases as it applied
to the separate factual evidence and
issues." (Respondent's Motion, page
8.) It is interesting to note that
the Respondent admits that in Hoffman,
supra, the Indiana Supreme Court con-
cluded "as a matter of law it could not
say that Hoffman's injury was caused by
an open and obvious danger." (See

Respondent's Motion, page 8.) (Our emphasis.) However, Respondent fails to point out to this Court the factual dissimilarities that Respondent claims justifies the different results between the Hoffman, supra, opinion and the decision in the instant case.

One final point remains. Respondent contends that this Court will not grant certiorari merely to review evidence or inferences therefrom. (See Respondent's Motion, page 8.) As this Court is well aware, this is not an appropriate statement of the law in this area. This Court has granted certiorari to review matters of evidence where the decisions are shockingly wrong and thus present substantial due process questions. Thompson v. City of Louisville, 362 U.S. 199 (1960); Garner v. Louisiana, 368 U.S. 157 (1961). This

Court has also reversed lower court decisions on the basis of lack of evidence. Vachon v. New Hampshire, 414 U.S. 478 (1974); Johnson v. Florida, 391 U.S. 596 (1968).

Dennis submits to this Court that the decision rendered by the Indiana Supreme Court is one that is "shockingly wrong" and presents this Court with a violation of a substantial and time honored American constitutional principle of equal application of the law regardless of parentage or station in life.

CONCLUSION

Wherefore, Dennis respectfully prays that this Court grant plenary review of the decision of the Indiana Supreme Court.

Respectfully submitted,

Patrick W. Harrison

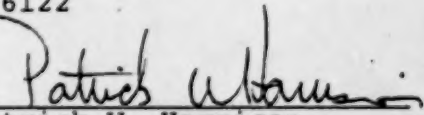
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CERTIFICATE OF SERVICE

I hereby certify that I have on
this 24th day of February, 1984, mailed
three copies of this Petitioner's Reply
Brief in Opposition to Respondent's
Motion to Dismiss or Affirm, first class,
postage prepaid, to:

David E. Lawson
Attorney at Law
110 S. Washington Street
Danville, IN 46122

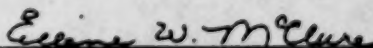

Patrick W. Harrison

STATE OF INDIANA)
) SS:
COUNTY OF BARTHOLOMEW)

Subscribed and sworn to before me,
a Notary Public, in and for said County
and State, on this the 24th day of
February, 1984.

My Commission
Expires:

Nov. 29, 1986


Eillene W. McClure, Notary
Public, Residing in Bar-
tholomew Co., IN